

1 Ekwan E. Rhow (CA SBN 174604)
2 erhow@birdmarella.com
3 Marc E. Masters (CA SBN 208375)
4 mmasters@birdmarella.com
5 Christopher J. Lee (CA SBN 322140)
6 clee@birdmarella.com
7 BIRD, MARELLA, RHOW,
8 LINCENBERG, DROOKS &
NESSIM, LLP
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
Telephone: (310) 201-2100
Facsimile: (310) 201-2110

9 Jonathan M. Rotter (CA SBN 234137)
10 Kara M. Wolke (CA SBN 241521)
11 Gregory B. Linkh (*pro hac vice*)
12 GLANCY PRONGAY & MURRAY,
13 LLP
14 1925 Century Park East, Suite 2100
15 Los Angeles, California 90067-2561
Telephone: (310) 201-9150
jrotter@glancylaw.com
kwolke@glancylaw.com
glinkh@glancylaw.com

16 *Attorneys for Plaintiffs*

17 **UNITED STATES DISTRICT COURT**
18
CENTRAL DISTRICT OF CALIFORNIA

19 BERNADINE GRIFFITH, et al.,
20 individually and on behalf of all others
21 similarly situated,

22 Plaintiffs,

23 vs.

24 TIKTOK, INC, a corporation;
25 BYTEDANCE, INC., a corporation,

26 Defendants.

Kalpana Srinivasan (CA SBN 237460)
Steven Sklaver (CA SBN 237612)
Michael Gervais (CA SBN 330731)
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars
14th Floor
Los Angeles, CA 90067
Telephone: (310) 789-3100
ksrinivasan@susmangodfrey.com
ssklaver@susmangodfrey.com
mgervais@susmangodfrey.com

Y. Gloria Park (*pro hac vice*)
SUSMAN GODFREY L.L.P.
One Manhattan West, 50th Floor
New York, NY 10001
Telephone: (212) 336-8330
gspark@susmangodfrey.com

John W. McCauley (*pro hac vice*)
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, TX 77002
Telephone: (713) 651-9366
jmccauley@susmangodfrey.com

Case No. 5:23-cv-00964-SB-E
**DISCOVERY MATTER (FOR
DISTRICT JUDGE PER
MAGISTRATE JUDGE)**

**PLAINTIFFS' MOTION FOR
RULE 37(E)(1) MEASURES FOR
DATA SPOILATION**

Hon. Stanley Blumenfeld, Jr.
Date: October 25, 2024
Time: 8:30 AM

Discovery Hearing Cutoff: Nov. 1, 2024
Pretrial Conference Date: Jan. 10, 2024
Trial Date: Jan. 21, 2025

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on October 25, 2024, before the Honorable
3 Stanley Blumenfeld, Jr., United States District Judge, Plaintiffs will and hereby do
4 move, pursuant to Federal Rule of Civil Procedure 37(e)(1), for measures no greater
5 than necessary to cure the prejudice that Plaintiffs have suffered from Defendants'
6 spoliation of non-TikTok user data that they have collected through the TikTok Pixel
7 and/or TikTok Events API.

8 Plaintiffs note that, as of the filing of this Motion, the date of October 25, 2024
9 is closed for civil hearings on Judge Blumenfeld's calendar. However, when
10 Plaintiffs initiated the Motion by serving their portion of the joint stipulation on
11 Defendants on September 26, 2024, the October 25, 2024 date was open for civil
12 hearings. Further, on September 23, 2024, when Plaintiffs filed their Motion for
13 Reconsideration regarding Order on Motion to Certify Class Action (Dkt. 252), the
14 October 25, 2024 hearing date was available, and Plaintiffs thus noticed the
15 Reconsideration Motion for hearing on that date. Given Plaintiffs' understanding that
16 the Reconsideration Motion is already noticed for hearing on October 25, Plaintiffs
17 have noticed the hearing for the instant Rule 37(e)(1) Motion on that date as well
18 (1) in case the Court wishes to consider the motions in conjunction, and (2) because
19 as of the filing of this Motion, the date of November 1, 2024, which is the motion
20 cut-off in this case, is also closed for civil hearings. Plaintiffs note that the Court's
21 Standing Order provides that "[a] motion filed on a closed hearing date will be
22 stricken or continued at the Court's discretion. *A party that waits too long and files a*
23 *motion to be heard on a date that turns out to be unavailable risks having the motion*
24 *stricken and not considered at all.*" Plaintiffs submit that the Court should not strike
25 this motion but should instead decide it.

26 This motion is made following the conferences of counsel pursuant to L.R. 7-
27 3 and L.R. 37-1 which took place on May 14, 2024.
28

This motion is based upon this notice, the concurrently filed joint stipulation, the exhibits and declarations attached thereto, the pleadings and records on file in this action and such other matters as the Court deems necessary and proper.

Dated: October 4, 2024

By: /s/ *Ekwan E. Rhow*

Ekwan E. Rhow (CA SBN 174604)
Marc E. Masters (CA SBN 208375)
Christopher J. Lee (CA SBN 322140)
**BIRD, MARELLA, BOXER,
WOLPERT, NESSIM, DROOKS,
LINCENBERG & RHOW, P.C.**
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
Telephone: (310) 201-2100
erhow@birdmarella.com
mmasters@birdmarella.com
clee@birdmarella.com

Jonathan M. Rotter (CA SBN 234137)
Kara M. Wolke (CA SBN 241521)
Gregory B. Linkh (*pro hac vice*)
**GLANCY PRONGAY & MURRAY,
LLP**
1925 Century Park East, Suite 2100
Los Angeles, California 90067-2561
Telephone: (310) 201-9150
jrotter@glancylaw.com
kwolke@glancylaw.com
glinkh@glancylaw.com

Kalpana Srinivasan (CA SBN 237460)
Steven Sklaver (CA SBN 237612)
Michael Gervais (CA SBN 330731)
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150
ksrinivasan@susmangodfrey.com
ssklaver@susmangodfrey.com
mgervais@susmangodfrey.com

Y. Gloria Park (pro hac vice)
SUSMAN GODFREY L.L.P.
One Manhattan West, 50th Floor
New York, NY 10001
Telephone: (212) 336-8330
Facsimile: (310) 336-8340
gspark@susmangodfrey.com

1 John W. McCauley (pro hac vice)
2 **SUSMAN GODFREY L.L.P.**
3 1000 Louisiana Street, Suite 5100
4 Houston, TX 77002
5 Telephone: (713) 651-9366
Facsimile: (713) 654-6666
jmccauley@susmangodfrey.com

6 *Attorneys for Plaintiffs*

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE BY ELECTRONIC POSTING**

2 I, the undersigned say:

3 I am not a party to the above case, and am over eighteen years old. On October
4 4, 2024, I served true and correct copies of the foregoing document, by posting the
5 document electronically to the ECF website of the United States District Court for
6 the Central District of California, for receipt electronically by the parties listed on the
7 Court's Service List.

8 I affirm under penalty of perjury under the laws of the United States of
9 America that the foregoing is true and correct.

10 Executed on October 4, 2024, at Nassau County, NY.

12 _____
13 /s/ *Y. Gloria Park*
14 _____
15 Y. Gloria Park